

CHARMAY B. ALLRED
EDWARD C. ALLRED

IBLA 76-548, 76-549

Decided August 24, 1976

Appeals from separate decisions of the Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offers M 33057 and M 33078.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within 15 days after the filing of the lease offer, the offer must be rejected.

2. Oil and Gas Leases: Applications: Drawings

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by the submission of further information.

APPEARANCES: Charmay B. Allred, pro se; Edward C. Allred, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

These appeals are combined for consideration as they present identical issues. Charmay B. Allred filed drawing entry card oil and gas lease offer for parcel 870 and Edward C. Allred filed one for parcel 898 in the January 1976 simultaneous filing procedure authorized by the regulations in 43 CFR Subpart 3112. Charmay B. Allred named Sally E. Ehmke on her card as a party in interest while Edward C. Allred indicated that Mardell S. Ehmke had an interest in his offer. Charmay's offer was drawn first for parcel 870 and Edward's was drawn second for parcel 898.

By decisions dated February 23, 1976, the Montana State Office, BLM, rejected both offers for failure to submit the required statements of interest, copy or explanation of the agreement between the parties and the evidence of the qualifications of the additional party within 15 days after the filing of the lease offer, citing 43 CFR 3102.7.

The reasons for the appeals filed by both parties are identical. For obvious reasons, we quote their allegations verbatim:

- (1) During January 1976 I entered in good faith 50 applications in four separate BLM oil and gas drawings expecting, quite understandably, uniform consideration. All entry fees [filing fees] were taken by the four BLM Offices concerned.
- (2) Under the date of January 15, 1976 and prior to the official January 26 filing date I supplied each BLM Office with written agreements, statements of interest, and powers of attorney in an honest effort to fully disclose my interests and to fulfill regulatory requirements.
- (3) Subsequent replies from BLM Offices were not uniform as to acceptable procedures, ranging in response to my filings from total acceptance to total rejection (Billings, Montana).
- (4) During the 15 days following January 26 -- allowing for mail delivery time, for the receipt of February Results Lists, and for confusion brought on by differing instructions being received from BLM Offices -- I was unfairly pressured and befuddled as to just how one should properly proceed to protect a rightful interest.

- (5) Prior to January 1976 I had never filed for an Oil & Gas Lease and now it would appear that my initial filings were innocently entered under conditions of unfair handicap as measured against the foregoing evidence and the Billings, Montana rejection letter of February 23, 1976. [1/]

1/ The Montana State Office has inserted, in the case records, machine copies of correspondence from the State Office correspondence file which took place between the respective parties hereto and the State Office during and subsequent to the January 1976 simultaneous filing procedure herein involved. Such correspondence explains, to a certain extent, the allegations made by the appellants.

The gist of the correspondence is that Sally E. Ehmke and Marshall S. Ehmke attempted to file powers of attorney to themselves from Charmay B. Allred and Edward C. Allred, respectively, granting them full power to execute and file oil and gas applications with various Bureau of Land Management Offices; to execute all statements of interest and of holdings in leases; and to execute all other statements required or which may be required by the acts and regulations. They also filed copies of agreements between them and the respective principals which, among other things, provided that all leases acquired shall vest 80 percent in the principal and 20 percent in the agent. They requested that serial numbers be assigned to these instruments which could be referred to without the necessity of filing repetitious statements with each drawing entry card.

The correspondence culminated in the State Office's refusal to accept the powers of attorney and agreements in letters dated February 20, 1976, addressed to the two principals. They were informed that the instruments do not meet the requirements of an "exclusive" authorization under the provisions of 43 CFR 3120.6-1(a)(3) because they do not specifically limit the authority of the attorney-in-fact to file offers for the sole and exclusive benefit of the principal and not in behalf of any other person in whole or in part. The reason given is that the lease agreement discloses that the attorney-in-fact will receive a 20 percent beneficial interest in any lease when issued; also, under an exclusive power, the attorney-in-fact may execute all statements required to be executed by the principal, but the former must also submit a signed statement that he has not received or will not receive any interest in the lease when issued. They were also informed that the powers of attorney cannot be considered a "general" authorization within the provisions of 43 CFR 3102.6-1(a)(2) because they authorize the attorney-in-fact to execute all statements of interest on behalf of the

Accordingly, they requested that such indulgence be granted as will permit them to provide whatever material in whatever form is desired to restore the rejected applications to good standing.

Appellants' reasons for appeal are without merit. Immediately above the space provided on the drawing entry card for listing the names of other parties in interest are printed instructions, which contain the following warnings:

* * * Compliance must also be made with the provisions of 43 CFR 3102. * * *
Other parties in interest - All interested parties must furnish evidence of their qualifications to hold such lease interest. See 43 CFR 3102.7.

43 CFR 3102.7 clearly states:

* * * If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the

fn. 1 (continued)

principal and, under a general power of attorney, the principal must make his own statements of interest. The letters also informed the principals as to the statements that must be filed by both the principal and the attorney-in-fact with each offer, pointing out that only the power of attorney, if accepted, can be referred to by serial number in which filed.

This correspondence is irrelevant to, and presents no justiciable issues in, the cases at hand as the drawing entry cards were executed by the Allreds and not by agents or attorneys-in-fact. We have merely noted this information to give a better understanding of the allegations made by appellants in their appeals; and also, with the thought that the Bureau of Land Management may wish to inquire into the uniformity of interpretation and application of these regulations in their various State Offices in view of appellants' allegation that the replies of four BLM Offices were not uniform as to acceptable procedures, ranging in response to the filings from total acceptance to total rejection in Montana. The other three offices were not named.

statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. * * *

[1] The requirements of 43 CFR 3102.7 are mandatory. An offer not in compliance with this regulation must be rejected. Emily Sonnek, 21 IBLA 245 (1975); Wesley Warnock, 17 IBLA 338, 342 (1974); D. O. Keon, 17 IBLA 81 (1974); Mary West, 17 IBLA 84 (1974); James V. Orbe, 16 IBLA 363 (1974).

Furthermore, the Department's regulations may not be waived to favor an applicant who pleads ignorance of the law or inexperience in oil and gas leasing. D. O. Keon, *supra* (at 83); Hiroshi Mizoguchi, 4 IBLA 249 (1972). Moreover, all persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1970); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 384-85 (1974); Wesley Warnock, *supra* (at 341); Mary West, *supra* (at 86). The regulation controlling here is a duly promulgated regulation. 35 F.R. 9679, June 13, 1970.

[2] Appellants' request that they be permitted to provide whatever information is necessary to restore the applications to good standing must be rejected. Under the simultaneous filing procedure an applicant may not "cure" the defects by submission of additional information after the drawing. Southern Union Production Co., 22 IBLA 379, 382 (1975); Manhattan Resources Inc., 22 IBLA 24, 26 (1975); Ballard E. Spencer Trust, Inc., 18 IBLA 25, 27 (1974). 2/ See 43 CFR 3112.5-1.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Martin Ritvo
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

2/ Suit for judicial review pending sub nom. B.E.S.T., Inc. v. Morton (D. N.M., Civ. No. 75-060).

